IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

RPFC.No. 25 of 2002()

MC.185/2000 of THE FAMILY COURT ,MANJERI
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REVISION PETITIONER/RESPONDENT:

MOHAMMED, S/O. MACHINGAPURAYIL
ABDULLAKKUTTY, CHERUVAYOOR AMSOM DESOM,
P.O. VAZHAKKADU, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON
SRI.V.P.REMESH

RESPONDENTS: RESPONDENTS/PETITIONERS:
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1. RUKHIYA, D/O. PULLAUCHEERI USSAIN,
PULLANCHEERI HOUSE, CHERUVAYOOR AMSOM DESOM,
CHERUVAYOOR P.O., MALAPPURAM.

2. SAREENA, D/O. RUKIYA, AGED 15 YEARS,
(MINOR) REP. BY LTHE MOTHER OF GUARDIAN RUKIYA
THE 1ST RESPONDENT.

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RP(FC) NO.3079/2002

ORDER ON CRL. MP. NO.3079/2002 IN RP(FC) 25/2002

DISMISSED

10.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

R.P.(F.C.).NO. 25 OF 2002

DATED THIS THE 10TH AUGUST 2007

ORDER

The counter petitioner/husband in M.C.No.185/2000 is the revision petitioner who has sought for setting aside the order passed under Section 125 of the Code of Criminal Procedure granting maintenance to the petitioners in the M.C. at the rate of Rs.250/- to the first petitioner/wife and Rs.350/- to the second petitioner/daughter. It is the case of the revision petitioner that he is ailing and somewhat aged and that he is not having any means to pay the amount.

2. The evidence adduced in the matter consisted of the testimony of Pw.1, the first petitioner and RW1, the counter petitioner/revision petitioner and Exts.D1 to D4. It is the case of the petitioner that the counter petitioner married her in the year 1971 and they have got two sons and the daughter, i.e. the 2nd petitioner. The marriage was dissolved by pronouncing talak and that he contracted another marriage. Subsequently the counter petitioner dissolved the second marriage and married the present first petitioner again in 1982. Again he has left the first petitioner and contracted another marriage and since 1998 she is living separately and no

maintenance is paid to the petitioners. According to her, he is running a provision store and he has buildings that are let on rent. The amount claimed is Rs.500/- each per month.

3. The counter petitioner has filed statement contending that he has purchased a property and constructed a house wherein the petitioners are living . He has also stated that he has educated his two sons and they are working and they are maintaining the petitioners. It is the case that he suffered serious heart attack on 31-7-1998 and was admitted in the Medical College Hospital, Calicut and thereafter he is continuing treatment. He is not having any means, even to purchase medicines. According to him, the first petitioner was not looking after him. Hence, he married one Nafeesa. He has also produced Exts.D1 to D4, prescriptions, E.C.G.reports etc. and the medical certificate issued by a Cardiologist which support the contention that he is suffering from cardiac ailment.

4. Pw1 has testified that the 2nd petitioner is studying in the 10th Standard. She has also stated that the counter petitioner is having business and has got buildings rented out from which he is getting an income of Rs.3,000/-. No documents have been produced to establish the fact that he is having business and let out the building on rent.

RW1 is the counter petitioner who has testified that he has sold the building that he was having as he was not having any income to treat for his ailments. According to him, he is managing with the help of his younger brother and the present wife. He has stated that he has educated his sons in airconditioning, wiring, driving and plumbing and both of them are working. I find that no objective evidence has been adduced to establish the fact that the revision petitioner is having any income. On the other hand the evidence adduced do indicate that he is suffering from cardiac problems and is under treatment. In the circumstances, I find that the findings arrived at by the court below are not based on any evidence and the same is liable to be set aside; and I do so. The revision petition is allowed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

R.P.(F.C)NO. 25 OF 2002
ORDER

10-8-2007